

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA**

**(KIGOMA SUB – REGISTRY)**

**AT KIGOMA**

**LAND CASE NO. 28 OF 2022**

**KAREGO MBEHO..... PLAINTIFF**

**VERSUS**

**MACHAZO VILLAGE COUNCIL .....1<sup>st</sup>RESPONDENT**

**KIGOMA DISTRICT COUNCIL.....2<sup>nd</sup> RESPONDENT**

**ATTORNEY GENERAL .....3<sup>rd</sup> RESPONDENT**

**JUDGEMENT**

06<sup>th</sup> & 18<sup>th</sup> December 2023

**Rwizile, J**

The plaintiff is resident of Machazo village of Kigoma District. He has been locked in this litigation with the defendants for a claim of land since 2022. It has been alleged that the suit land measures 33 acres or almost 2049 metres of **circumference** reserved for forest belong to the village of Machazo, which was used to keep bees and for firewood at the time, Sido used to manufacture lime.

In 2012, the plaintiff alleged to have acquired that land by purchase from the family of the late Jacob Nyamitwe at the considered amount of 7,000,000.00TZS. The plaintiff therefore in an attempt to use the said disputed land destroyed behaves for some village group of persons

which spark into a dispute. The village government stopped him from using it. Efforts to mediate the matter between the plaintiff and the first defendant by central government authorities at the local and District level nipped in the bud. The plaintiff, therefore decided to file this action claiming for the following reliefs;

- i. That the plaintiff be declared the rightful owner of the landed property measuring 2049 metres measured surrounding the plot which is equal to 33 acres at Machazo village within Kigoma District Council
- ii. The defendants be ordered to pay costs of this suit
- iii. Any other relief the honourable court deems just and fit to grant

The plaintiff was in the service of Mr. Michael Mwangate, learned advocate while the defendants were represented by Mr. Tengesi, learned State Attorney

To prove his case, Karego Mbeho (Pw1) testified and tendered other three witnesses namely Yahaya Kasongo (Pw2), Ramadhani Juma Mlela (Pw3) and Mbona Jacob (Pw4). The defence case was supported by Oliva Alfonce Kandela (Dw1), Ally Kafashe (Dw2), Mnyonge Said Luhiso (Dw3), Neema Halfan kilanoza (Dw4), Bandeko Almas Bandeko (Dw5).

Two issues framed are:-

- i. Whether the plaintiff is the rightful owner of the suit land measured 2049 meters of circumference or 33 acres.
- ii. To what are the reliefs are the parties entitled to?

To determine the first issue, one has to go by the evidence. The plaintiff cast with the duty to prove ownership of the suit land, testified that he bought it from the late Jacobo Nyamitwe. Exhibit P1, he testified, it is an agreement showing payment of the remaining amount of money not paid to the late Nyamitwe.

According to him, payment was made to the relatives of the deceased. Apart from the minutes of the village meeting admitted as P2, the plaintiff as well tendered, exhibit P3. This document shows compensation was paid by TANESCO for electric transmission line that passed through the land owned by the family of Nyamitwe in the then Simbo village, now Machazo. Ngoni Jacob the son of the late Jacob Nyamitwe received compensation for the family. This evidence is supported by exhibit P2, the minutes of the village council meeting which declared that the forest reserve belongs to the late Jacobo Nyamitwe. It can be extracted from exhibit P2 that land- forest reserve belong to the late Jacob Nyamitwe. This was recorded when it was applied for survey of the land before a title deed could be issued. The relevant part as interpreted above reads;



*"Wajumbe wote kwa kauli moja wamepitisha/wameyakubali maombi ya Ngoni Jacobo ya kuwekewa alama ya mipaka(Bikon) kwenye eneo lake la msitu kwani eneo hilo la kuhifadhi msitu ni mali halali ya marehemu baba yake JACOBO NYAMITWE."*

The land was declared to be owned by the deceased Jacob Nyamitwe. The other plaintiff's witnesses supported his assertion and clearly said, land belonged to the plaintiff.

Among the witnesses for the defence was Dw1 who is a village executive officer. She tendered a map, exhibit D2, showing the suit land is a forest reserve and therefore the property of the village of Machazo. This evidence was supported by other defence witnesses.

In my view, it is not in dispute from the evidence that originally the same premises were occupied by the village. At times, in the 1980s used by the so-called SIDO where a lime factory was established. When SIDO left, there is no evidence proving if the same premises was given back to village or it was left to some private persons. But in terms of the evidence of Dw3 and Dw5, they were using the same to keep bees upon obtaining permission from the village government in 2010. According to their evidence supporting that of Dw1, the land is a reserved forest and does not belong to the plaintiff. Dw2 was among the people who worked with SIDO. His evidence is that the land belonged to SIDO

because there was a lime factory. But in 1981 SIDO left the premises, the premises automatically reverted back to the village.

The existing evidence that shows the plaintiff owns land is exhibit P1, P2 and P3. In P1, it is shown that the plaintiff was paying in order to settle the amount not paid when the late Nyamitwe purchased land. But that does not show exactly which piece of land was being paid for. Still, there is no evidence showing, it was the same land in dispute. In terms of exhibit P2, the minutes of the meeting, where the village declared that the forest belong to the Nyamitwe. In this document, what surprises is that there was no land dispute and yet, there was a declaration that land, the whole forest belong to the said person. I think, if the matter before the council was just to make survey and demarcate why then make a declaration that the land belonged to him.

Still, in exhibit P3, there is no clear indication as to which party of the land that was obtaining compensation for the electricity transmission line. The evidence of the defence has said, that the said land, has no electric transmission line. I think, this point may be true because, if the land measures 33 acres, which land TANESCO paid compensation for an electric transmission line. The plaintiff did not show that by evidence.

Again, there is no dispute that Dw3 and Dw5 were bee keepers. They used to keep bees in their group since 2010 until 2022 when the plaintiff

moved to evict them. Finally, there is evidence that the forest was reserved and had been managed by the private company on authority of the village government. The so-called the forest monitor, according to Dw1 was sponsoring it for safe custody. This evidence as well has not been controverted by the plaintiff. It is not the plaintiff or any of his witnesses who showed documents proving that the late Nyamitwe purchase land from either the village or villagers.

It is therefore clear to me that, the land subject of dispute has not been proved to be 33 acres. There is no evidence proving so. Judgement is therefore entered for the part of the land measuring 2049 square metres. Having answered the first issue in the manner I have done. I therefore enter judgement for the plaintiff, for the land measuring 2049 square Metres. I find no reason to award costs. Each party to bear its own costs.



A handwritten signature in black ink, appearing to be "Ack. Rwizile", is written over a horizontal line.

**ACK. Rwizile**  
**Judge**  
**18.12.2023**